

IN THE UNITED STATES COURT OF CLAIMS

MAGNOLIA RANCH, INC.,
a corporation,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

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No. 392-52

ANSWER

The United States of America by James M. McInerney, Assistant Attorney General, for its answer to plaintiff's petition says:

1. The defendant admits the allegations contained in paragraph 1.
2. The defendant is without sufficient information either to admit or deny the allegations contained in paragraph 2.
3. The defendant admits the allegations contained in paragraph 3.
4. The defendant is without sufficient information either to admit or deny the allegations contained in the first two sentences of paragraph 4. The defendant alleges that if the "responsible Army officials" attempted by oral representations to change the effect of the terms of the instrument referred to such action on their part was beyond the scope of their authority and unauthorized. The defendant admits that it entered into lease No. W-09-026-eng-945 covering the lands described and that the condemnation proceeding previously instituted in the United States District Court for the Southern District of Florida (No. 183, Ori. Civil) was thereafter dismissed.

5. In relation to the allegations contained in paragraph 5, the defendant admits that it entered upon the lands described prior to the execution of the lease but such entry was made in conformance with the terms of a "right of entry" signed by George Terry, President, Magnolia Ranch, Inc., dated April 23, 1943. The defendant admits that it built an access road and a jeep range and erected targets for pistol, rifle and machine gun practice pursuant to the terms of the lease. The defendant denies that it used the land in a manner which was not authorized and beyond the scope of the lease. The defendant denies that it has caused the plaintiff great damage.

6. The defendant denies that it used the land in an unwarranted and unauthorized manner as alleged in paragraph 6. The defendant admits that as a result of the authorized use of the leased area there were some fires which caused a limited amount of damage and that it was necessary to de-dud the target range. The defendant alleges that the de-dudding operations have been completed and that except for 760 acres of restricted area the property has been completely restored to its original condition subject to the damage anticipated in paragraph 4a of the lease.

7. The defendant admits that plaintiff, its officers and agents were excluded from the leased area, as alleged in paragraph 7. The defendant alleges that such an exclusion was a matter of right since the lease was not terminated until August 6, 1948. The use made of the leased area by the Government until the termination of the lease was proper and legitimate.

8. In denying the allegations contained in paragraph 8, the defendant alleges that Mr. George Terry, President of the plaintiff corporation, was present with representatives of the Government on several occasions when inspections and surveys were made which the defendant's representatives believed to be made in accordance with the provisions of the lease.

9. The defendant denies that the land was used in an unauthorized fashion as alleged in paragraph 9. The defendant is without sufficient information to either admit or deny the remaining allegations contained in paragraph 9.

10. The defendant admits that there was a building which may have been referred to as a hunting lodge on the premises as alleged in the first sentence of paragraph 10. The defendant admits that the building was unoccupied but the defendant denies that at the time of the lease the building was structurally sound and in good repair.

The defendant alleges that there was no request by the plaintiff to be permitted to come upon the property to board the windows and doors or repair the damage caused by the alleged storms. The defendant alleges that the damage, if any, occurring to the hunting lodge was the result of acts of God and the direct consequence of the property not being constructed in a suitable manner to withstand the tropical storms.

11. The defendant denies that it used the property in an unauthorized fashion as alleged in paragraph 11. The defendant admits that 760 acres of the land described were left in such condition that the safe use which could be made of the land should be restricted to surface uses only. The defendant denies that the entire leased area contains numerous

duds. The defendant denies that the land is unfit for use and is without sufficient information to either admit or deny that the land is unsaleable.

12. The defendant is without sufficient information to either admit or deny the allegations contained in paragraph 12.

13. The defendant denies the allegations contained in paragraph 13.

14. The defendant is without sufficient information either to admit or deny the allegations contained in paragraph 14. The defendant alleges that if the fire was spread to adjoining property owned by the plaintiff that claim could not be compensated ^{for} in this action.

15. The defendant denies any liability for the damage alleged in paragraph 15 if any such damage did occur because paragraph 1a of the lease compensated the defendant for such damage.

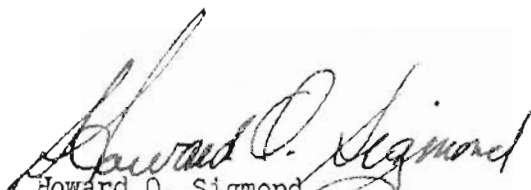
16. The defendant admits that the plaintiff filed a claim with the Department of the Army and that thereafter the plaintiff's refused to accept the settlement offered by that Department.

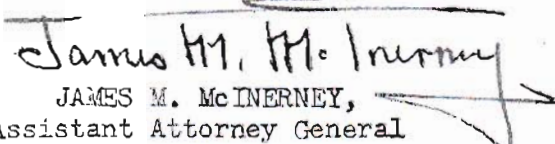
17. The defendant denies the allegations contained in paragraph 18.

18. The defendant is without sufficient information either to admit or deny the allegations contained in paragraph 18.

WHEREFORE, the defendant denies that the plaintiff is entitled to the relief prayed for in the petition and requests that this action be dismissed and that the defendant have judgment against the plaintiff for its costs.

Respectfully,


Howard O. Sigmond
Attorney, Department of Justice


JAMES M. McINERNEY,
Assistant Attorney General